THE QUESTION OF TERMINOLOGY.

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Mr. President, Members of the Association and Section, Ladies and Gentlemen:

You have heard ably discussed certain questions which arise out of the relationship between the American Union and the annexed Insular regions, viewed in its sociological and economic aspect. I now ask your attention to a question of immediate interest and importance growing out of this relationship viewed in its political, that is to say, its legal aspect. This question, which the Committee on Arrangements has called "The Question of Terminology," is: What are the correct terms to use in describing the political and legal relationship between the American Union and its distant annexed regions, assuming that this relationship is to be permanent and is to be on terms which are just to all parties?

More specifically, the question which I shall discuss will be, whether we, as Americans, ought, according to American principles, to use, in our political and legal language, the terms "colony," "dependence," and "empire," or whether we ought, according to those principles, to substitute for the term "colony," the term "free state," for "dependence," "just connection," and for "empire", "union."

It is needless to say that I shall accept the decisions of the Supreme Court of the United States as final in regard to all the matters adjudicated in them. But the Supreme Court has jurisdiction only for the purpose of determining the rights of individuals. The political relations between the Union and the Insular regions, it determines only so far as may be necessary to ascertain individual rights. Its present doctrine—that the American Union has power over the Insular regions subject to "fundamental principles formulated in the Constitution," or subject to "the applicable provisions of the Constitution," protects the civil rights of individuals, but under it the

power of the Union for political purposes remains absolute. The proposition which I shall offer for your judgment, will, I believe, not only not be in conflict with the proposition laid down by the Supreme Court, but will give a reason why they are right. It will, too, I believe, give a reasonable basis for our holding that the power of the American Union over the Insular regions, while ample for the maintenance of a just and proper permanent relationship with them under our control, is not absolute even as respects their political rights.

I have said that I shall discuss this question upon American principles. I shall not base myself on the Constitution of the United States, though I shall try to show the relation of that document to the question, as I understand it. I shall assume it to be settled by the decisions of the Supreme Court,—as it seems clearly to be—that with the exception of the "Territory" clause of that instrument, it is, and of right ought to be, the Constitution of the thirteen original States of he American Union and of the other States which they have admitted into their Union, and of no other States or communities; and that therefore it does not extend of its own force outside the American Union in any constitutional or legal sense, but only in a metaphorical sense—this being as I understand it, the meaning of the Court when they hold, as they do, that, though the "Territory clause" is of present and universal significance as respects all the regions annexed to the Union, yet, with this exception, only "the applicable provisions of the Constitution" or "the fundamental principles formulated in the Constitution" are in force in the annexed regions. "Extensions," so-called, of the Constitution by Act of Congress, are of course mere Acts of Congress, and whether such metaphorical "extensions" are permanent will depend upon the terms and conditions of the "extension."

But though I shall not base myself on the Constitution of the United States, I shall nevertheless base myself on a great American document, which preceded the Constitution as a statement of American principles, and which is so far from being inconsistent with it that the Democratic party, in its platform of 1900, called it "the Spirit of the Constitution"—

I refer to the Declaration of Independence. It is the American principles set forth in that document which I shall try to discover. If I shall be adjudged to have rightly interpreted that instrument, it will follow that we ought to substitute, in our political and legal language, for the term "colony," the term "free state," for "dependence," "just connection," and for "empire," "union." In making such substitution, however, it will be necessary to give to the terms "free state" and "union," a scientific meaning which will differ from that which they now have in the popular mind, but which will, I believe, be the same as was given to these terms by the Revolutionary statesmen.

I shall not allow myself to be embarrassed by the fact that in my first published writing I used the terms "colony," "dependence" and "empire;" for at the same time that I used these terms, I based myself on principles which were those of free statehood, just connection and union, to which I adhere to this day.

Taking the Declaration of Independence, therefore, as the exposition of the fundamental principles on which all American political theory is based, and to which all American policy must conform, let me state briefly the general meaning and purpose of this instrument, as I understand it.

As a result of the discussion for twelve years preceding the Declaration, the doctrine of the extension of the British Constitution to the American Colonies, which from their situation, could never be represented on equal terms in Parliament, was found to be useless for the protection of American rights, political or civil; and the doctrine that their rights were dependent on the Colonial Charters was found to be inadequate, for these Charters, while protecting the civil rights of the Americans to some extent, proceeded on the theory that they held all their political rights at the will or whim of Great Britain. The Americans felt and knew that they were entitled to political, as well as civil rights, and they all firmly believed that each so-called "colony" was a free state and subject to no external control beyond what was necessary to preserve their relationship with Great Britain on just terms to all the parties.

The only question which the Americans discussed, as soon as they comprehended the whole situation, was, Why was each so-called "colony" a free state and why had it always been such? The Declaration of Independence, as I understand it, gave to the world their solution of this problem. Their answer, as I understand it, was, that the American Colonies were and always had been free states, because their relations with the State of Great Britain were not under the British Constitution and were not wholly under the Colonial Charters, but were under a supreme and universal common law, which governs the relations between men, communities, bodies corporate, states and nations, and which they called in the Declaration "the Law of Nature and of Nature's God," according to which every community on the earth's surface, within reasonable limits for the formation and execution of a just public sentiment, is entitled to be a free state,—that is, to be free from external control, in executing its just public sentiment, except so far as may be necessary to enable it to conform to the terms of its just connections with other free states. This doctrine of free statehood as a universal right is, as I understand it, the central idea of the Declaration.

Assuming this to be the central idea, let us see how this idea is reached; and for that purpose, let us notice the exact language of the Declaration. The first paragraph reads:

"When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation."

The "causes of separation" are prefaced by a number of propositions determining the nature of the "political bands" by which one people may be "connected with" another. These propositions are all rules of human conduct, and are therefore principles of law, though they are called "self-evident truths." This part of the Declaration reads:

"We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness."

The conception of the universal right of free statehood is reached, in the Declaration, through a series of three propositions, each stated to be self-evident, and yet all forming a sequence. The basal proposition is, that "all men are created equal." Rufus Choate and John James Ingalls have declared this proposition and the succeeding one that "all men are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness," to be "glittering generalities." Abraham Lincoln, on the other hand, in his speech at Gettysburg, at the most solemn and stirring moment in the country's history, declared that the proposition that all men are created equal was the foundation-idea of the nation, to which it was dedicated by the Fathers.

The doctrine of equality arising from the common creation of all men as the spiritual offspring of a common Creator, was the doctrine of the Reformation in its broadest form, as declared by Penn. Taking into consideration the religious character of the Americans, as well as the learning and acumen of that most remarkable body of men who constituted the Continental Congress, it seems not only not improbable, but probable, and indeed necessary to conclude, that the proposition that "all men are created equal" was intended to be the epitome of the doctrine of the Reformation, as that doctrine was broadened by the influence of Penn and his followers. As the Governments of Europe were at that time acting on the political philosophy of feudalism and medievalism, which in its last analysis was based on the proposition that all men are

created unequal, or that some are created equal and some unequal, the Declaration, if it be true that it based the American political philosophy upon the broadest doctrine of the Reformation, announced an American System as opposed to the European System.

From the doctrine of equality arising from the common creation of all men by a personal Creator to whom all were equally related, it is declared by the Declaration to follow as a "self-evident" truth that there are certain rights, which are attached to all men by endowment of the Creator as being the correlative of the unalienable needs of all men, and which inasmuch as they arise from the universal limitations which the Creator has imposed, are as unalienable as the needs themselves. These unalienable rights are declared to be the rights of life, liberty and the pursuit of happiness.

The doctrine of unalienable rights, necessarily supposes a universal law, for the conception of law must precede the conception of right. This law, as conceived of by the Declaration is a common and universal law. In the first part of the preamble this universal common law is spoken of as "the law of Nature and of Nature's God." Inasmuch as the rights claimed are those which depend for their existence upon revelation as well as reason, it is evident that this common and universal law to which the Declaration appeals, is the "law of nature and of nations," of the scholars of the Reformation, which was conceived of as based on revelation and reason, and as governing every relationship of men, of bodies corporate, of communities, of states and of nations. Out of this conception there had already grown that great division of the law which deals with the temporary relations between independent states, which we now call International Law.

Having thus established the doctrine of unalienable rights, based on a universal common law of nature and of nations, which all men, all bodies corporate, all communities, all governments, all states and all nations were bound to enforce, the Declaration proceeds to a consideration of the forms, methods and instrumentalities by which these unalienable rights are to be secured.

It declares that the primary instrumentality by which these rights are secured, are governments "deriving their just powers from the consent of the governed." Contrary to the usual interpretation, the Declaration does not state that government is the expression of the will of the majority. Governments, it is declared, are instituted to "secure" the "unalienable rights" of individuals. The will of the majority, of course, is quite as likely to destroy as to secure the unalienable rights of individuals. Moreover, the Declaration says merely that "governments are instituted among men"—not that men universally institute their own governments. The whole statement that the governments which are instituted among men to secure the unalienable rights of individuals, universally "derive their just powers from the consent of the governed," is inconsistent with the proposition that governments are the expression of the mere will of the majority, for it is only their "just powers" that governments "derive" from "the consent of the governed," and the will of the majority may be just or unjust. The expression "deriving their just powers from the consent of the governed" seems to me most probably to be an epitome and summary of the two fundamental propositions of the law of agency—"*Obligatio mandati consensu contrahentium consistit*, a free translation of which is "The powers of an agent are derived from the consent of the contracting parties," and *Rei turpis nullum mandatum est*, a free translation of which is "No agent can have unjust powers." On this interpretation the meaning of the whole sentence "that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed," is, it would seem, that there is a universal right of all communities to have a government of a kind best adapted for the securing of the unalienable rights of individuals, instituted either by their own selection or by the appointment of an external power, and that all governments, however instituted, are universally the agents of the governed to secure these rights. Government is thus declared not to be the expression of the will of the majority, but the application of the just public sentiment justly ascertained through forms best adapted for this purpose.

The free statehood which is claimed in the concluding part of the Declaration to be the right of the Colonies is by the Declaration based on the philosophical declarations of the preamble. The particular proposition which bears upon the right of free statehood is evidently the one which declares that, "to secure these [unalienable] rights [of individuals], governments are instituted among men, deriving their just powers from the consent of the governed." The intermediate propositions, as the result of which the universal right of free statehood follows from this proposition, are, it would seem, these: If government is the doing of justice according to public sentiment, government is the expression and application of a spiritually and intellectually educated public sentiment, since, although a rudimentary knowledge of what is just is implanted in every human being, a full knowledge of what is just comes only after a course of spiritual and intellectual education. Hence it follows that the forms and methods of government should be such as are adapted to such spiritual and intellectual education. Education takes place by direct personal contact, and can be best accomplished only through the establishment of permanent groups of individuals who are all under the same conditions. The formation and expression of a just public sentiment, therefore, requires the establishment of permanent groups of persons, more or less free from any external control which interferes with their rightful action, under a leadership which makes for their spiritual and intellectual education in justice. Such permanent groups within territorial limits of suitable size for developing and expressing a just public sentiment, are free states. Territorial divisions of persons set apart for the purpose of convenience in determining the local public sentiment, regardless of its justness or unjustness, are not states, but are mere voting-districts. Just public sentiment, for its expression and application, requires the existence of many small free states, disconnected to the extent necessary to enable each to be free from all improper external control in educating itself in the ways of justice; mere public sentiment, for its expression and application, requires only the existence of a few great states

divided into voting-districts, each district being under the control of the Central Government, which is to it an external control. Just public sentiment, as the basis of government, is a basis which makes government a mighty instrument for spirituality and growth; mere public sentiment, regardless of its justness or unjustness, as the basis of government, is a basis which makes government a mighty instrument for brutality and deterioration. Human equality, unalienable rights, government according to just public sentiment, and free statehood, are inevitably and forever linked together as reciprocal cause and effect.

The ultimate meaning of the expression "that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed," seems therefore to be that by the common law of nature and of nations there is a universal right of free statehood which pertains to all communities on the face of the earth within territorial limits of suitable size for the development and operation of a just public sentiment.

So complete and universal are the principles of government by just public sentiment and of free statehood that, according to the Declaration, even when all the people of a free state are meeting together to alter or abolish a form of government which has become destructive of the ends of its institution, as it is declared they may rightfully do, their right to form a new government is not absolute so that they can rightfully do whatever the majority wills, but is limited by this universal common law, so that they can rightfully institute only a new form of government whose foundation principles and mode of organization are such "as to them shall seem most likely to effect their safety and happiness"—that is, to secure the unalienable rights of individuals to life, liberty and the pursuit of happiness.

The declaration of the universal right of free statehood is accompanied, in the Declaration, by the claim that the Colonies, as free states, had always been in political "connection" with the State of Great Britain. The concluding part of the Declaration reads:

"We, therefore, ... declare that these United Colonies are, and of right ought to be, free and independent states, ... and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved."

In this it was necessarily implied that the Colonies had always been free states or free and independent states, and that, by the Declaration, at most their right of independent statehood came into existence; that they had theretofore at all times been in political connection, either as free states under the law of nature and of nations, or as free and independent states by implied treaty, with the free and independent State of Great Britain; that the dissolution of the connection had not come about by an act of secession on their part, but was due to the violation, by the State of Great Britain, either of the law of nature and of nations, or of the implied treaty on which the political connection was based.

The term "connection" was an apt term to express a relationship of equality and dignity. "Connection" implies two things, considered as units distinct from one another, which are bound together by a connecting medium. Just connection implies free statehood in all the communities connected. Union is a form of connection in which the connected free states are consolidated into a unity for the common purposes, though separate for local purposes. Merger is the fusion of two or more free states into a single unitary state. Connection between free states may be through a legislative medium, or through a justiciary medium, or through an executive medium. The connecting medium may be a person, a body corporate, or a state. States connected through a legislative medium, whether a person, a body corporate or a state, and whether wholly external to the states connected or to some extent internal to them, whose legislative powers are unlimited or which determines the limits of its own legislative powers, are "dependent" upon or "subject" to the will of the legislative medium. Such states are "dependencies," "dominions," "subject-states," or more accurately "slave-states,"—or more accurately still, not states at all, but mere

aggregations of slave-individuals. States connected through a legislative medium, whether a person, a body corporate or a state, and whether wholly external to the states connected or in part internal to them, whose legislative powers are granted by the states and which has only such legislative powers as are granted, are in a condition of limited dependence, dominion, and subjection; but their relationship is by their voluntary act and they may, and by the terms of the grant always do to some extent control the legislative will to which they are subject and on which they are dependent. Where states are connected or united through a justiciary medium, whether that justiciary medium is a person, a body corporate, or a state, all the states are free states, their relationships being governed by law. Where states are connected through an executive medium, whether that executive medium is a person, a body corporate, or a state, all the states are free and independent states, and each acts according to its will. All connections in which the legislative medium,—whether a person, a body corporate or a state, and whether wholly external to the states connected, or to some extent internal to the states connected,—has unlimited legislative powers or determines the limits of its own legislative powers, are fictitious connections, the relationship being really one which implies "empire" or "dominion" on one side, and "subjection" or "dependence" on the other. Such connections are properly called "empires" or "dominions." So also all connections in which the only connecting medium is a common executive, whether a person, a body corporate or a state, are fictitious connections, the relationship being one of "permanent alliance" or "confederation" between independent states. Such connections are properly called "alliances" or "confederations." The only true connections are those in which there is a legislative medium, whether a person, a body corporate or a state, whose legislative powers are limited, by agreement of the connected states, to the common purposes, and those in which there is a justiciary medium, whether a person, a body corporate, or a state, which recognizes its powers as limited to the common purposes by the law of nature and of nations, and which as-

certains and applies this law, incidentally adjudicating, according to this law, the limits of its own jurisdiction. Just connections tend to become unions, it being found in practice necessary, for the preservation of the connection in due order, that the power of limited legislation for the common purposes and the power of adjudicating and applying the law for the common purposes should extend not only to the states, but to all individuals throughout the states.

Thus "dependence," as a fictitious and vicious form of connection, is, it would appear, forever opposed to "connection" of a just and proper kind. If it were attempted to sum up the issue of the American Revolution in an epigram, would not that epigram be: "'Colony,' or 'Free State?' 'Dependence,' or 'Just Connection?' 'Empire,' or 'Union'?"

According to the opinion of the Revolutionary statesmen, as it would seem, a universal right of free statehood does not imply a universal right of self-government. Statehood and self-government are two different and distinct conceptions. The Americans claimed the right of free statehood as a part of the universal rights of man, but they claimed the right of self-government because they were Englishmen trained by generations of experience in the art of self-governmnt and so capable of exercising the art. A state is not less or more a free state because it has self-government. It is a free state when its just public sentiment is to any extent ascertained and executed by its government,—however that government may be instituted,—free from the control of any external power. It does not prevent a region from being a free state that its government is wholly or partly appointed by an external power, if that government is free from external control in ascertaining and executing the just local sentiment to any extent. Nor does it interfere with the right of free statehood when an external power stands by merely to see that the local government ascertains and executes the just local sentiment to a proper extent. The external power in that case is upholding the free statehood of the region. It stands as surety for the continuance of free statehood.

The right of self-government, according to this view, is a

conditional universal right of free states. When a community, inhabiting a region of such territorial extent that it is not too large to make it possible for a just public sentiment concerning its affairs to be developed and executed, and not so small as to make it inconvenient that it should be in any respect free from external control, is of such moral and intellectual capacity that it can form and execute a just public sentiment concerning its internal affairs and its relations with other communities, states and nations, it has not only the right of free statehood,—that is, of political personality,—which is of universal right, but also the right of self-government. The right of such a free state to self-government is complete if there be no just political connection or union between it and other free states, or partial, if such a just connection or union exists, being limited, in this latter case, to the extent necessary for the preservation, in due order, of the connection or union.

Independence was regarded apparently also, by the Declaration, when it declared the Colonies to be "free and independent states," to be a right superadded to the right of free statehood in some cases, and therefore to be a conditional universal right of free states—that is, a right universally existing where the conditions necessary to independence — great physical strength, and great moral and intellectual ability—exist.

The Colonies regarded themselves as free states in such a just and rightful connection with the free and independent State of Great Britain as to form with it a union. From this it followed, inasmuch as this connection and union was conceived of as existing under a universal common law, that the State of Great Britain, through its Government, was the justiciary medium which connected the free states of that which they conceived of as the British-American Union, and as such applied the principles of this universal common law for preserving and maintaining in due order the connection and union. There, therefore, resulted the conception of Great Britain as what may perhaps be called "the Justiciar State" of this British-American Union. If we were to use the exact language of the Revolution, it would probably be more proper

to speak of Great Britain as "the Superintending State" of the British-American Union, as the power of Great Britain over the Colonies was generally spoken of by the Americans as "the superintending power." Lord Chatham used this expression in his famous bill introduced in the House of Lords. The expression "Justiciar State," however, seems to be more scientifically correct. A Justiciar was an official who exercised the power of government in a judicial manner. His power was neither strictly legislative, nor strictly executive, nor strictly judicial, but was complex, being compounded of all three powers, so that his executive action, taken after judicially ascertaining the facts in each case and applying to them just principles of law, resulted in action having the force of legislation.

The Revolutionary statesmen have left a very considerable literature showing their views concerning the nature of the right of a state to be the Justiciar State of a Union of States, and concerning the powers which a Justiciar State may rightfully exercise.

Arguing on the same basis as that adopted by them regarding the right of self-government and independence, it appears that they considered the right of a state to act as Justiciar for other states to be a right superadded to the right of self-government and independence in some cases—that is, that justiciarship is a conditional universal right of self-governing and independent states, the conditions necessary to its existence being great physical strength, a judicial character and a capacity for leadership.

The power exercised by a Justiciar State in a Justiciary Union, they recognized as being neither strictly legislative, nor strictly executive, nor strictly judicial, but a power compounded of all these three powers. They considered that it was to be exercised for the common purposes after investigation by judicial methods; that the just public sentiment of the free states connected and united with the Justiciar State was to be considered by it in the determination of the common affairs; and that the action of the Justiciar State was to result, after proper hearing of the free states and all parties con-

cerned, in dispositions and regulations made according to just principles of law, which were to have the force of supreme law in each of the connected and united free states respectively. This kind of power, which the Fathers called "the superintending power" or "the disposing power" under the law of nature and of nations, and which may be called, using an expression now coming into use, "the power of final decision," or more briefly "the justiciary power," being neither legislative, executive nor judicial, but more nearly executive than legislative, the more conservative among them considered might be exercised, consistently with the principles of the law of nature and of nations, either by the Legislative Assembly of the Justiciar State or by its Chief Executive, advised by properly constituted Administrative Tribunals or Councils; the action of the Legislative Assembly superseding that of the Chief Executive in so far as they might be inconsistent with each other. This right of both the Legislative Assembly and of the Chief Executive, properly advised, to exercise the powers of the Justiciar State—the former having supreme, and the latter superior justiciary power,—under the law of nature and of nations, is, I believe, also recognized by our Constitution, as I have elsewhere attempted to show.

Of course there must be conditions of transition where the relations between free states which would normally be in union, or between detached portions of what would normally be a unitary state, temporarily assume a form which is partly one of union or merger, and partly of dependency. The justification of all such forms of relationship must, it would seem, be found in the fundamental right which every independent state, whether a justiciar state or not, has to the preservation of its existence and its leadership or judgeship—that is, in the right of self-preservation, which, when necessary to be invoked, overrules all other rights. On this theory must, it would seem, be explained the relations between the American Union and its Territories, between Germany and Alsace-Lorraine, and between England and Ireland. On this theory of self-preservation, also, must, it would seem, be explained the permanent relationship of dependency which exists between

the District of Columbia and the American Union—such dependency being necessary to the preservation of the life of the Union.

Out of the conception of a universal common law of nature and of nations which governs all human acts and relationships, —and therefore all the acts and relationships of states and nations as well as of men, bodies corporate and communities, —there has arisen and at the present time exists, a science of the universal and common law of the state, called the Science of the Law of the State, which concerns itself with the internal relations of a state to its people, its bodies corporate and its communities, and a science of the universal and common law of independent states, called the Science of International Law, which concerns itself with the occasional and temperoray relations of independent states. The great field of law which concerns the permanent relations of free states is not yet covered by a recognized science. Must there not therefore emerge from this conception of a universal and common law of nature and of nations, a third science of law, covering this field, which will take as its basal proposition the doctrine that free statehood is the normal and rightful condition of all communities on the earth's surface within suitable limits for the formation of a just public sentiment, and which will concern itself with the permanent relations between free states? As such permanent relations must always be by just connection, either in its simple form or in the form of union, may not such a science of law, standing between the science of the Law of the State and the science of International Law, be called the science of the Law of Connections and Unions of Free States?

Taking the whole Declaration together, and reading it in the light of the political literature which was put forth on both sides of the water between the year 1764 and 1776, it seems to be necessary to conclude that the views of the most conservative of the American statesmen of the period concerning the connection between Great Britain and the Colonies were these:

They considered, as I interpret their language, that the connection between the free and independent State of Great Britain,

and the American Colonies, as free states, had existed and of right ought to have existed, according to the principles of the law of nature and of nations—that law being based on principles opposed to the principles applied by the governments of Europe, and being thus what may be called a law of nature and of nations according to the American System. Had they used a more definite and scientific phraseology, it seems that their view would best be expressed by saying that they considered that the relationship between Great Britain and the Colonies had always existed according to the principles of the Law of Connections and Unions of Free States. They accordingly admitted, as I understand them, that Great Britain, as a free and independent state, had power, as Justiciar, over the American Free States, for the common purposes of the whole Union, to finally decide, by dispositions, ordinances and regulations having the force of supreme law, made through its Government after a judicial hearing in each case for the investigation of facts and the application to them of the principles of the Law of Connections and Unions of Free States, upon all questions of common interest arising out of the connection and union; and that each of the American Free States had power, through its Legislature, to legislate according to the just public sentiment in each, and the right to have its local laws executed by its Executive and interpreted and applied by its Courts, free from all control by the State of Great Britain, except what was necessary to protect and preserve the Union.

In this view, the actions of the Americans show the evolution of a continuous theory and policy, and the application of a single American system of principles,—a system which was based upon free statehood, just connection and union. The British-American Union of 1763 was a Union of States under the State of Great Britain as Justiciar, that State having power to dispose of and make all rules and regulations respecting the connected and united free states, needful to protect and preserve the connection and union, according to the principles of the Law of Connections and Unions. The dissolution of this Union, caused by the violation by the State of

Great Britain of its duties as Justiciar State, gave a great impetus to the extreme states'-rights party, and the next connection formed,—that of 1778 under he Articles of Confederation,—was not a Union, the Common Government (the Congress) being merely a Chief Executive. Such a connection proving to be so slight as to be little more than a fiction, they formed, under the Constitution of 1787, the only other kind of a union which appears to be practicable, namely, a union under a common government which was a Chief Legislature for all the connected and United States by their express grant, and whose powers were expressly limited, by limitation in the grant, to the common purposes of the whole connection and union of free states.

If the Constitution, in defining what are the common purposes of the Union and what the local purposes of the States of the Union, is declaratory of the principles of the Law of Connections and Unions of Free States, as it seems not unreasonable to hold, the Limited Legislative Union formed under the Constitution may perhaps be considered, in view of the supremacy of the Judiciary, as Guardians of the Constitution, over the Limited Legislature, as a species of Justiciary Union.

Moreover, if in what has been said we are correct, the relationship at present existing between the American Union and the Insular regions, is that of *de facto* Justiciary Union, and the American Congress, under the lead of President McKinley and President Roosevelt, has acted, with reference to these regions, according to the principles of the American System. The American Union, through President McKinley, has declared itself to be "a liberating, not a conquering nation," and has recognized the people of Hawaii, Porto Rico and the Philippines as each having a separate and local citizenship, thus recognizing each of these regions as a *de facto* free state connected with the American Union. The action of the American Union extends to the regulation of the action of individuals in these free States, so that a Greater American Union of Free States exists *de facto*. To bring into existence a Greater American Union *de jure*, it needs, first, the public and express recognition by the American Union of itself as

the Justiciar State, and of each of the separate Insular regions within proper territorial limits, as a Free State in just connection and union with the American Union; and, secondly, the establishment by the American Union of the necessary Advisory Council for investigating facts and for advising the President before he, on behalf of the American Union as Justiciar State, exercises his superior justiciary powers, and for advising the Congress before it, in the same behalf, exercises its supreme justiciary powers. Councils suitable for advising the local Governors, when they, on behalf of the American Union as Justiciar State, exercise their inferior justiciary powers, already exist. Of such a Greater American Union, the present American Union would be the Supreme Justiciary Head, with power to finally determine the questions arising out of the relationship, not by edict founded on will and force, but by decision carefully made in each case after ascertaining the facts in each case and applying to them the principles of the Law of Connections and Unions properly applicable to them.

Is not this theory the true *via media?* The theory of the automatic extension of the constitution of a state over its annexed insular, transmarine and transterranean regions which from their local or other circumstances can never equally participate in the institution and operation of its government, in some cases protects individual rights, but it takes no account of the right of free statehood, which is the prime instrumentality for securing these rights. The theory of a power over these regions not regulated by a supreme law, is a theory of absolute power over both individuals and communities in these regions,—a theory which implies an absence of all rights. The theory of a power over these regions based on the principles of the Law of Connections and Unions, granting that this law is itself based on the right of human equality, protects the rights of persons, of communities, of states and of nations. On this theory the "Territory Clause" of the Constitution recognizes the Law of Connections and Unions as determining the relationship between the American Union and the Insular regions—"needful" rules and regulations being those

which are adapted to accomplish the end desired and which are consistent with the principles of the Law of Connections and Unions as declared in the Declaration of Independence. On this theory, the doctrine of the Supreme Court that the civil rights of individuals in cases growing out of our relations with our Insular brethren are protected by "the fundamental principles formulated in the Constitution," or by "the applicable provisions of the Constitution," is translated into the doctrine that these individual and civil rights are protected by the principles of the Law of Connections and Unions of Free States, as these principles are formulated in the Constitution and as they are disclosed by an examination of the applicable provisions of the Constitution, and that not only are these civil rights protected by this law, but also the political rights of all the parties to the relationship. On this theory, the jurisdiction of the Supreme Court continues to be exactly the same as at present. The necessary Advisory Councils for ascertaining the just political relations between the American Union and the Insular regions and for determining the political rights growing out of that relationship, would not in the least interfere with the Supreme Court in the exercise of its functions. They would supplement that Court, which now protects the civil rights of all concerned through its adjudications in civil cases, by assisting the Congress and the President to protect and preserve the political rights of all concerned through dispositions and needful rules and regulations in political cases.

By adopting this theory of the Reformation and the American Revolution, may not the American System extend indefinitely without danger to America herself? There would be no domination, no subjection. The same Law of Connections and Unions would extend over and govern throughout the whole Greater American Union. This Greater American Justiciary Union would be but a logical application of the principles underlying the American Legislative, Executive and Judicial Union formed by the Constitution of the United States.

It would not be the Constitution which would follow the

flag into the regions which America has annexed to herself, but the Law of Connections and Unions, which is a part of the Law of Nature and of Nations according to the American System.

I recur, therefore, to my first proposition and submit to your judgment whether the terms "colony," "dependence," and "empire," on the one hand, and the terms "free state," "just connection," and "union," on the other, are not the symbols of two great and fundamentally opposed systems of politics—the one European, and the other American; whether the American terms and the American System are not capable of being applied universally and beneficently, in the way pointed out above, throughout all places outside the present Union which are within the limits of its justiciary power; and whether, if they are capable of this application, it is not our duty, both logically and ethically, to use the American terms in describing the relations between us and our Insular brethren, applying at the same time the principles of the American System, and thus calling into existence a Greater American Union.